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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 SAP AKTIENGESELLSCHAFT, a
German corporation,
17 Plaintiff,
18 v.
19 i2 TECHNOLOGIES, INC., a Delaware
corporation,
20 Defendant.

Case No. 4:07-cv-04187 SBA

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

21 **STIPULATED PROTECTIVE ORDER GOVERNING**
22 **DISCOVERY OF CONFIDENTIAL AND PROPRIETARY INFORMATION**

23 The Court issues this Protective Order to facilitate document disclosure and production
24 under the Local Rules of this Court and the Federal Rules of Civil Procedure. Unless modified
25 pursuant to the terms contained in this Order, this Order shall remain in effect through the
26 conclusion of this litigation.

27 In support of this Order, the Court finds that:
28

1 1. Documents or information containing confidential proprietary and business
2 information and/or trade secrets ("Confidential Material") that bear significantly on the parties'
3 claims or defenses are likely to be disclosed or produced during the course of discovery in this
4 litigation;

5 2. The parties to this litigation may assert that public dissemination and disclosure of
6 Confidential Material could severely injure or damage the party disclosing or producing the
7 Confidential Material and could place that party at a competitive disadvantage;

8 3. Counsel for the party or parties receiving Confidential Material are presently
9 without sufficient information to accept the representation(s) made by the party or parties
10 producing Confidential Material as to the confidential, proprietary, and/or trade secret nature of
11 such Confidential Material; and

12 4. To protect the respective interests of the parties and to facilitate the progress of
13 disclosure and discovery in this case, the following Order should issue:

14 **IT IS THEREFORE ORDERED THAT:**

15 1. **Application of Protective Order** - All information, testimony, things or documents filed
16 with the Court or produced or given (either by a party or by a non-party) as part of discovery
17 in this action shall be governed by this Protective Order ("Covered Matter"), including
18 documents and things, portions of documents, answers to interrogatories, responses to
19 requests for admissions of fact, depositions, transcripts of depositions, portions of briefs,
20 memoranda or writings filed with or otherwise supplied to the Court, and technical or
21 commercial information derived therefrom deemed by any entity producing that information
22 to be confidential information. This Protective Order permits the parties to designate certain
23 material as "CONFIDENTIAL – ATTORNEYS' EYES ONLY," "HIGHLY
24 CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY," or "HIGHLY
25 CONFIDENTIAL - RESTRICTED SOURCE CODE." (hereafter collectively referred to as
26 "Confidential Material")

27 (a) **CONFIDENTIAL - ATTORNEYS' EYES ONLY designation** - A party or non-party
28 (the "Designating Party") may designate as "CONFIDENTIAL – ATTORNEYS' EYES

ONLY” that portion of any Covered Matter that the Designating Party believes in good faith in accordance with Fed. R. Civ. Proc. 26(c) contains confidential information which, if disclosed to a competitor, may cause competitive harm, including but not limited to confidential research, development, financial, technical, marketing, product planning, personal information, commercial information, patent prosecution, patent licensing, intellectual property protection strategies and steps, industry analyses, and any other information which the party believes in good faith may cause competitive harm if disclosed.

(b) HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY designation -

The Designating Party may designate as “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” that portion of any Covered Matter that the Designating Party believes in good faith in accordance with Fed. R. Civ. Proc. 26(c) contains any material that constitutes or contains (1) non-public ongoing patent prosecution information or (2) current research and development materials for products that have not yet been released, that will harm a designating party’s competitive position if it becomes known to a person or party other than the producing party.

(c) HIGHLY CONFIDENTIAL - RESTRICTED SOURCE CODE designation - The

parties recognize that, in certain instances, software can be highly valuable and must be maintained in confidence. Such software and in particular readable software in the form of source code or assembly code, is collectively referred to herein as “Source Code.”

“Source Code” shall not include code that is widely disseminated to customers and/or non-party vendors or consultants.

The provisions of this Protective Order with respect to Confidential Material shall not apply to information which (a) was, is, or becomes public knowledge without fault of the receiving party and not in violation of this Protective Order; (b) is lawfully acquired in good faith from a third party not subject to this Protective Order, such third party being lawfully in possession of it and under no obligation of confidentiality to the producing party; (c) was lawfully possessed by the receiving party prior to first receipt of the material from the producing party, provided such

1 information was not received directly, or indirectly, from the producing party; (d) is discovered
2 independently by the receiving party by means which do not constitute a violation of this
3 Protective Order; or (e) was submitted to any governmental entity without request for confidential
4 treatment.

5 **2. Designating and Marking Confidential Material** - The producing party shall mark the
6 copies of such Covered Matter as "CONFIDENTIAL - ATTORNEYS' EYES ONLY,"
7 "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY," or "HIGHLY
8 CONFIDENTIAL - RESTRICTED SOURCE CODE," prior to producing the copies to the
9 opposing party. If a document has more than one designation, the more restrictive or higher
10 confidential designation applies. To the extent the parties will produce documents that were
11 first produced in other litigations and labeled "Confidential" or "Highly Confidential," or
12 designated with any other confidentiality restrictions, such documents will be treated as if
13 they had been designated as "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS'
14 EYES ONLY," under the terms of this Protective Order, unless and until the parties reach a
15 different agreement regarding such documents and/or the Court rules otherwise. This
16 Protective Order shall not in any other way change a party's obligations under any other
17 agreement or protective order.

18 (a) **Documents:** Documents may be designated by placing one of the following legends, or
19 an equivalent thereof, on any such document: "CONFIDENTIAL - ATTORNEYS'
20 EYES ONLY," "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES
21 ONLY," or "HIGHLY CONFIDENTIAL - RESTRICTED SOURCE CODE." Such
22 legends shall be placed upon the first page of each document containing Confidential
23 Material and upon each page within such document considered to contain Confidential
24 Material.

25 (b) **Native and/or Other Electronic Materials:** All Confidential Material not reduced to
26 documentary, tangible or physical form or which cannot be conveniently designated as set
27 forth in Paragraph 2(a) shall be designated by informing the receiving party of the
28 designation in writing. To the extent the receiving party subsequently generates copies of

1 this information, whether electronic or hard-copy, it shall mark such copies with the
2 appropriate confidentiality designations. When documents are produced in electronic
3 form, the producing party shall include a confidentiality designation on the medium
4 containing the documents. If the medium contains documents in native electronic format,
5 the medium shall include an electronic database record for each native format file that
6 includes on the face of the electronic database record the applicable confidentiality
7 designation (if any) and a document identification or Bates number that identifies the
8 specific production number of such document within the producing party's production.
9 When a receiving party prints a native format file from such medium, the receiving party
10 shall also print the corresponding electronic database record and the receiving party shall
11 attach the printed electronic database record to the printed native format file so that the
12 native file's confidentiality designation will be readily apparent to one viewing the file. In
13 the event that a receiving party prints a native format file from a medium that has been
14 marked with a confidentiality designation, but the native file is not accompanied by an
15 electronic database record or the electronic database record could not be printed, the
16 receiving party shall mark each such page of such native file with a "HIGHLY
17 CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY" designation until the
18 native file's electronic database record may be located or printed.

19 **(c) Documents Made Available for Inspection:** Any documents or electronically stored
20 information (including physical objects) made available to counsel for the receiving party
21 for initial inspection prior to the producing party producing copies of selected items shall
22 initially be considered, as a whole, to constitute "HIGHLY CONFIDENTIAL - OUTSIDE
23 ATTORNEYS' EYES ONLY" information and shall be subject to this Protective Order.
24 Thereafter, the producing party shall have a reasonable time to review and designate the
25 appropriate documents under the confidentiality designations constituting Confidential
26 Material prior to furnishing copies to the receiving party.

27 **(d) Physical Exhibits:** The confidential status of a physical exhibit shall be indicated by
28 placing a label on said physical exhibit with the appropriate confidentiality notice as

described in Paragraph 2(a) above.

(e) **Written Discovery:** In the case of information incorporated in answers to interrogatories or responses to requests for admission, the appropriate confidentiality notice as described in Paragraph 2(a) above shall be placed on each answer or response that contains Confidential Material.

(f) **Deposition Proceedings:** Deposition transcripts shall be treated as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" material until 30 days after receipt of the deposition transcript by counsel for the witness, after which the information revealed during the deposition shall cease to be treated as Confidential Material unless, at the deposition and on the record, or in writing before the 30 days have expired, the witness, his or her employer or his or her counsel designate the deposition transcript (including exhibits), or any portion thereof, as "CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY." In the case of non-party witnesses, either plaintiff, defendant or the non-party witness, his or her employer, or his or her counsel may designate information revealed as Confidential Material either by a statement to such effect on the record in the course of the deposition, or in writing within 30 days of receipt of the deposition by the non-party witness's counsel.

Upon designation of the transcript on the record, during the deposition, the portion of the deposition containing Confidential Material shall continue in the absence of all persons to who access to said Confidential Material has been denied under the terms of this Protective Order. The Court Reporter or other person recording the proceedings shall segregate any portion of the transcript of the deposition or hearing which has been stated to contain Confidential Material and may furnish copies of these segregated portions, in a sealed envelope, only to the deponent, to the Court, and to counsel for the parties bound by the terms of this Protective Order.

With regard to designations made within thirty (30) days after receipt of the transcript of a deposition, counsel shall make such designations by sending written notice to

1 the Court Reporter, to counsel for the parties, and to any other person known to have a copy
2 of said transcript. The notice shall reference this Protective Order, identify the appropriate
3 level of confidentiality, and identify the pages and/or exhibits so designated. All copies of
4 transcripts designated in this fashion shall be marked with a notice indicating the appropriate
5 level of confidentiality of the material and shall be governed by the terms of this Protective
6 Order

7 **3. Challenging Designations:** At any time after the delivery of Covered Matter, counsel for
8 the party or parties receiving the Covered Matter may challenge the designation of all, or
9 any portion thereof, by providing 10 business days written notice thereof to counsel for the
10 party disclosing or producing the Covered Matter prior to filing any motion with the Court
11 to challenge such designations. The notice shall identify the specific pages or portions of
12 pages being challenged. All Covered Matter is entitled to confidential treatment pursuant to
13 the terms of this Order until and unless the parties formally agree in writing to the contrary
14 or a contrary determination is made by the Court as to whether all or a portion of a Protected
15 Document is entitled to confidential treatment. The burden for showing confidentiality falls
16 on the designating party.

17 **4. Treatment of Confidential Material:** Covered Matter and any information contained
18 therein shall be used solely for the purposes of: (1) this litigation as provided for below; and
19 (2) the litigation between i2 and SAP currently pending in the Eastern District of Texas,
20 styled i2 Technologies US, Inc. et al. v. SAP AG et al., Case No. 2:06-CV-352, pursuant to
21 the terms of the Protective Order entered by the Court in that case - and shall not be used or
22 shown, disseminated, copied, or in any way communicated to anyone for any other purpose
23 whatsoever.

24 The term "copy" as used herein means any photographic, mechanical or computerized copy
25 or reproduction of any document or thing, or any verbatim transcript, in whole or in part, of
26 such document or thing.

27 **5. Limitations on Use and Disclosure of CONFIDENTIAL - ATTORNEYS' EYES ONLY**
28 **Material:** Covered Matter designated as "CONFIDENTIAL - ATTORNEYS' EYES

1 ONLY” and any information contained therein shall be disclosed only to the following
2 persons:

- 3 (a) Outside counsel of the parties in the law firms identified below, and any members of their
4 support staff assisting such counsel;
- 5 (b) In-house attorneys who are actively engaged in assisting outside counsel with respect to
6 this litigation, and their clerical staff;
- 7 (c) The Court, and court personnel and stenographic reporters, engaged in such proceedings as
8 are necessary to the preparation for trial (e.g., depositions) and/or trial of this action;
- 9 (d) A reasonable number of independent outside experts or consultants engaged by counsel or
10 the parties to assist in this litigation and their clerical staff; the disclosure to any such
11 independent outside expert or consultant pursuant to this subpart must be reasonably
12 necessary to assist counsel for any party in the preparation for trial and/or trial and such
13 persons must become qualified to receive such materials and information in accordance
14 with the procedures in Paragraph 8 below before receiving such information; and
- 15 (e) Outside copying, litigation support and management services, exhibit preparation services,
16 any interpreter or translator, including any typist or transcriber used in connection with
17 providing interpretation or translations services, and outside jury consultants and trial
18 consultants.

19 Covered Matter designated as “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” and any
20 information contained therein shall be used solely for the purposes of this litigation and the
21 litigation between i2 and SAP currently pending in the Eastern District of Texas, styled i2
22 Technologies US, Inc. et al. v. SAP AG et al., Case No. 2:06-CV-352. All Qualified
23 Persons with authorized access to materials or information so designated shall be advised of
24 their obligations under this Protective Order. In-house attorneys and their staff having
25 access to materials or information designated as “CONFIDENTIAL - ATTORNEYS’ EYES
26 ONLY” shall keep such materials and information and copies of such materials or
27 information in a location to which access is restricted to the in-house attorneys and their
28 staff.

6. Limitations on Use and Disclosure of HIGHLY CONFIDENTIAL - OUTSIDE

ATTORNEYS' EYES ONLY Material: Covered Matter designated as "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY," and any information contained therein shall be disclosed only to the following persons:

- (a) Outside counsel of the parties in the law firms identified below, and any members of their support staff assisting such counsel;
- (b) The Court, and court personnel and stenographic reporters, engaged in such proceedings as are necessary to the preparation for trial (e.g., depositions) and/or trial of this action;
- (c) A reasonable number of independent outside experts or consultants engaged by counsel or the parties to assist in this litigation and their clerical staff; the disclosure to any such independent outside expert or consultant pursuant to this subpart must be reasonably necessary to assist counsel for any party in the preparation for trial and/or trial and such persons must become qualified to receive such materials and information in accordance with the procedures in Paragraph 8 below before receiving such information; and
- (d) Outside copying, litigation support and management services, exhibit preparation services, any interpreter or translator, including any typist or transcriber used in connection with providing interpretation or translations services, and outside jury consultants and trial consultants.

Covered Matter designated as "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY" and any information contained therein shall be used solely for the purposes of this litigation and the litigation between i2 and SAP currently pending in the Eastern District of Texas, styled i2 Technologies US, Inc. et al. v. SAP AG et al., Case No. 2:06-CV-352. All Qualified Persons with authorized access to materials or information so designated shall be advised of their obligations under this Protective Order.

7. Limitations on Use and Disclosure of HIGHLY CONFIDENTIAL - RESTRICTED

SOURCE CODE Material: Covered Matter designated as "HIGHLY CONFIDENTIAL - RESTRICTED SOURCE CODE" and any information contained therein shall be disclosed only to the following persons:

- 1 (a) Outside counsel of the parties in the law firms identified below, and any members of their
- 2 support staff assisting such counsel;
- 3 (b) The Court, and court personnel and stenographic reporters, engaged in such proceedings
- 4 as are necessary to the preparation for trial (e.g., depositions) and/or trial of this action;
- 5 (c) A reasonable number of independent outside experts or consultants engaged by counsel or
- 6 the parties to assist in this litigation and their clerical staff; the disclosure to any such
- 7 independent outside expert or consultant pursuant to this subpart must be reasonably
- 8 necessary to assist counsel for any party in the preparation for trial and/or trial and such
- 9 persons must become qualified to receive such materials and information in accordance
- 10 with the procedures in Paragraph 8 below before receiving such information.

11 Covered Matter designated as "HIGHLY CONFIDENTIAL - RESTRICTED SOURCE CODE"

12 and any information contained therein shall be used solely for the prosecution of this litigation.

13 All Qualified Persons with authorized access to materials or information so designated shall be

14 advised of their obligations under this Protective Order.

15 **8. Clearing of Consultants and Experts to See Confidential Material:** Prior to disclosure of

16 any material designated as "CONFIDENTIAL - ATTORNEYS' EYES ONLY," "HIGHLY

17 CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY," or "HIGHLY

18 CONFIDENTIAL - RESTRICTED SOURCE CODE," to any persons described in

19 Paragraphs 5(d), 6(c), or 7(c), counsel for the party that has received such material shall first

20 provide such person with a copy of the Protective Order and shall cause such person to

21 execute the Acknowledgment attached hereto as Exhibit A, evidencing such person's

22 agreement to be bound by the terms and conditions of this Protective Order.

- 23 (a) Prior to disclosure of any designated material to any persons described in
- 24 Paragraphs 5(d), 6(c), or 7(c) a duplicate original of said written Acknowledgment
- 25 will be provided to each party, as well as a curriculum vitae of such person
- 26 including a description of the prior employment and consulting positions held by
- 27 such person in his/her field and disclosing any relationships to the parties, direct or
- 28 indirect.

(b) No designated material shall be shown to any person described in Paragraphs 5(d), 6(c), or 7(c) until fourteen (14) days after such person is identified in writing to the opposing party and such brief biological sketch is provided to the opposing party.

(c) In the event that a party objects in writing to the designation of any person described in Paragraphs 5(d), 6(c), or 7(c), within the fourteen (14) day period set forth in Paragraph 8(b) above, no disclosure of any Confidential Material may be made to such person until the objecting party consents or, after a good faith attempt to resolve the issue by the parties, the Court rules in favor of the non-objecting party. Objections shall not be unreasonably made.

9. **Improper Disclosure of Confidential Material:** If any Confidential Material is disclosed to any person other than in a manner authorized by this Order, the party responsible for the disclosure or knowledgeable of such disclosure, upon discovery of the disclosure, shall immediately inform the Designating Party of all facts pertinent to the disclosure that, after due diligence and prompt investigation, are known to the party responsible for the disclosure or knowledgeable of the disclosure (including the name, address and employer of the person to whom the disclosure was made), and shall immediately make all reasonable efforts to prevent further disclosure by each unauthorized person who received such information.

10. **Maintenance of HIGHLY CONFIDENTIAL - RESTRICTED SOURCE CODE**

Material: In addition to the terms set forth in Paragraphs 7 and 8 herein, Covered Matter designated "HIGHLY CONFIDENTIAL - RESTRICTED SOURCE CODE" shall be provided the following additional protections given the particularly sensitive nature of the information:

(a) Any and all source code, except for hard (non-electronic) copies, shall be stored and viewed only at the offices of one (1) agreed-upon source code custodian ("Source Code Custodian").

(b) Subject to subparagraphs (c) and (d), any source code produced in electronic form shall be stored and viewed only at the offices of the Source Code Custodian and shall be maintained in a secured, locked area. No electronic copies of source code

1 shall be made. Any such source code shall only be viewed or analyzed on a stand-
2 alone computer (a computer that is not connected to any internal or external
3 computer or computer network). The Source Code Custodian shall maintain a
4 Source Code Access Log identifying, each and every time any source code is
5 viewed, accessed or analyzed: (1) the name of each person who accessed the code;
6 (2) the date and time of access; (3) the length of time of access; and (4) whether
7 any hard (non-electronic) copies of any portion of the code were printed and/or
8 copied and the portion (by description or Bates range) of the code printed and/or
9 copied. The receiving party reviewing source code shall be allowed to make hard
10 (non-electronic) copies of material that they, in good faith, consider relevant. Each
11 party agrees that no character recognition or any OCR software shall be used on
12 the hard copies produced. The parties shall negotiate reasonable limitations on the
13 amount of source code that is released by the producing party at any given time.

14 (c) Any hard (non-electronic) copies of source code shall be stored and viewed only
15 within the United States at:

16 i. A secured, locked area in the offices of the Source Code Custodian, provided
17 the hard (non-electronic) copies are marked with the designation "HIGHLY
18 CONFIDENTIAL - RESTRICTED SOURCE CODE;"

19 ii. The Court;

20 iii. The site where any deposition relating to the source code is taken;

21 iv. Any intermediate location reasonably necessary to transport the information
22 (e.g., hotel prior to the deposition).

23 (d) For each and every hard (non-electronic) copy of any SOURCE CODE, or any
24 portion of any source code, the Source Code Custodian shall maintain a log
25 detailing the location of the copy. Excessive reproduction of source code should
26 be avoided.

27 (e) Prior to the receiving party taking possession of a hard (non-electronic) copy of
28 source code as provided for under this paragraph, the receiving party shall inform

the producing party as to specifically what portions of source code it plans to take into its possession. If any hard (non-electronic) copies of any portion of the code are copied, within 10 business days of the copying, the description or Bates ranges of the code copied and a hard copy will be provided by the reviewing party to the producing party.

(f) To the extent any source code becomes an exhibit to a deposition, two copies of the exhibit may be maintained at the U.S. office of outside counsel of record for each party in a secure, locked area. Counsel shall not designate source code as an exhibit solely for authentication purposes and shall only designate as an exhibit that portion of source code reasonably necessary for questioning.

11. Submission of Confidential Material to the Court: Where a party seeks to submit documents to the Court that have been or that contain information designated as Confidential Material by another party, the submitting party shall file such documents under seal according to the procedures set forth by the Court, the Local Rules including Civil Local Rule 79-5, the Federal Rules of Civil Procedure, and/or any other applicable rules. Where a submitting party declines to seek an order sealing documents submitted to the Court containing its own Confidential Material, the submitted material will no longer qualify for protection as Confidential Material under this Protective Order.

(a) Except for use in trial, in the event that any "CONFIDENTIAL - ATTORNEYS' EYES ONLY," "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL - RESTRICTED SOURCE CODE" is used in motions, briefs, or other documents filed with the Court, such document shall be filed under seal and bear the legend:

THIS DOCUMENT CONTAINS MATERIALS WHICH ARE
CLAIMED TO BE
CONFIDENTIAL – ATTORNEYS' EYES ONLY or
HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY or
HIGHLY CONFIDENTIAL –RESTRICTED SOURCE CODE

AND COVERED BY A PROTECTIVE ORDER

12. **Use of Confidential Material During Court Proceedings:** In the event that any Confidential Material is used in any Court pre-trial proceeding in this litigation (including but not limited to conferences, oral arguments, or hearings), the Confidential Material shall not lose its status as Confidential Material through such use. No less than three (3) days prior to such pre-trial proceeding, the party intending to use such Confidential Material shall notify the Designating Party of its intention. For the purposes of hearings on motions, designation or citation in the briefs of Confidential Material shall be considered to be sufficient notice to a party with respect to information referenced therein. In the event that the 3-day notice provided for herein is not practical, this provision shall not be used to strike Confidential Materials from being used at the proceeding, except for good cause shown, and the party seeking to use the Confidential Material on less than 3 days' notice shall notify the Court and the Designating Party of its intent to use the Confidential Material prior to the use of any such Confidential Material. Upon such notification, the parties shall meet and confer and the party seeking to use the Confidential Material shall take all steps reasonably required to protect the confidentiality of the Confidential Material during such use, including, but not limited to, requesting *in camera* proceedings. The terms of this Protective Order do not preclude, limit, restrict, or otherwise apply to the use of Confidential Material at trial. The parties agree to meet and confer in good faith prior to trial to establish procedures for the use of Confidential Material at trial.

13. **Inadvertent or Unintentional Disclosure of Confidential Material:** Regardless of whether the information was so designated at the time of disclosure, inadvertent or unintentional disclosure of Confidential Material shall not be deemed a waiver in whole or in part of the party's claim of confidentiality either as to the specific information disclosed therein or on the same or related subject matter, provided that the party asserting the claim of confidentiality informs the opposing party of its claim within a reasonable time after learning of the disclosure.

1 **14. Inadvertent Disclosure of Privileged Material:** If information subject to a claim of
2 attorney-client privilege, work-product immunity, or any other applicable claim of privilege
3 or immunity is inadvertently produced, such production shall in no way prejudice or
4 otherwise constitute a waiver of, or estoppel as to, any claim of privilege or immunity for
5 such information. Information subject to a claim of privilege or immunity must be returned
6 as soon as it is discovered, without any need to show the production was inadvertent. Upon
7 request by the producing party, the receiving party shall immediately return all copies of
8 such document(s) or thing(s) and shall destroy any newly created derivative document such
9 as a summary or comment on the inadvertently produced information. The receiving party
10 may move the Court for an Order compelling production of such information, but the motion
11 shall not assert as a ground for production the fact or circumstances of the inadvertent
12 production. If a claim is disputed, the receiving party shall not use or disclose a document
13 or information for which a claim of privilege or immunity is made pursuant to this paragraph
14 for any purpose until the matter is resolved by agreement of the parties or by a decision of
15 this Court.

16 **15. No Admissions:** Neither the taking of any action in accordance with the provisions of this
17 Protective Order, nor the failure to object thereto, shall be construed as a waiver of any
18 claim or defense in this litigation, or be admissible into evidence during trial. Moreover,
19 neither the failure to designate information in accordance with this Protective Order nor the
20 failure to object to a designation at or within a given time shall preclude a party from
21 subsequently seeking relief of the Court to impose such designation or to challenge the
22 propriety thereof.

23 **16. Termination of Litigation:** After termination of this litigation, the provisions of this Order
24 shall continue to be binding, except with respect to those documents and information that
25 become a matter of public record.

26 (a) **Jurisdiction:** This Court retains and shall have continuing jurisdiction over the
27 parties and recipients of the Covered Matter for enforcement of the provisions of
28 this Order following termination of this litigation.

1 (b) **Destruction of Covered Matter:** Within forty-five (45) days after termination of
2 this action by final, non-appealable dismissal or judgment, or by settlement,
3 counsel for the party or parties receiving Covered Matter shall destroy or return all
4 Covered Matter received, and notify the producing party of any such destruction.

5 (c) **Retention of Covered Matter:** Counsel for the party or parties receiving Covered
6 Matter may retain a copy of any pleading, transcript (e.g. deposition, hearing, or
7 trial), or exhibit thereto, regardless of its confidential designation. The party or
8 parties receiving the Covered Matter shall be entitled to keep their attorney work
9 product which refers or relates to any Covered Matter. Attorney work product
10 may be used in subsequent litigation provided that such use does not disclose
11 Covered Matter or any information contained therein.

12 17. **Order is Binding:** This Order shall be binding upon the parties and their attorneys,
13 successors, executors, personal representatives, administrators, heirs, legal representatives,
14 assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons
15 or organizations over which they have control. The parties agree that the provisions of this
16 Order shall become binding upon both parties at the time it is filed and shall remain so
17 following entry.

18 18. **Jurisdiction:** Any person receiving Confidential Material under the terms of this Protective
19 Order hereby agrees to subject himself or herself to the jurisdiction of this Court for
20 purposes of any proceedings relating to the performance under, compliance with or violation
21 of this Protective Order.

22 19. **Modification of Order:** Each party reserves the right to move the Court to modify the terms
23 of this Protective Order in the event that the party believes that it is necessary. In the event
24 such an application is made, all persons described herein shall be bound by the terms of this
25 Protective Order unless and until it is modified by the Court.

26 ///

27 ///

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ATTESTATION

Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under penalty of perjury that concurrence in the filing of the document has been obtained from Jason K. Sonoda.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: December 18, 2007

FENWICK & WEST LLP

By:/S/ Michael Sacksteder
Michael Sacksteder

Attorneys for Plaintiff SAP Akteingesellschaft

Dated: December 18, 2007

By:/S/ Jason Sonoda
Jason Sonoda

Attorneys for Defendant i2 Technologies, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2007

The Honorable Sandra Brown Armstrong
United States District Judge
Northern District of California

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SAP AKTIENGESELLSCHAFT, a German
corporation,

Plaintiff,

v.

i2 TECHNOLOGIES, INC., a Delaware
corporation,

Defendant.

Case No. 4:07-cv-04187 SBA

ACKNOWLEDGMENT

I, _____ depose and say that:

1. I live at _____, I am currently
employed by _____.

2. I have been provided with and read a copy of the PROTECTIVE ORDER agreed
to by the parties in the above-captioned litigation.

3. I understand that my name has been submitted as a proposed recipient of materials
and information that have been designated as "CONFIDENTIAL - ATTORNEYS' EYES
ONLY," "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY," or "HIGHLY
CONFIDENTIAL - RESTRICTED SOURCE CODE," pursuant to Paragraphs 1 and 2 of the
PROTECTIVE AGREEMENT.

4. I agree to abide by and be bound by the terms of the PROTECTIVE ORDER, and
agree that any Confidential Material within the meaning of the PROTECTIVE ORDER will be
used by me only to assist counsel in connection with the above-captioned litigation.

5. I agree that I will not disclose or discuss such Confidential Material with anyone
other than the persons described in Paragraphs 5, 6, and 7 respectively, and, if necessary,

1 qualified under Paragraph 8 of the PROTECTIVE ORDER.

2 6. I agree not to make any copies of Confidential Information furnished to me
3 pursuant to the PROTECTIVE ORDER other than copies used by me in accordance with
4 Paragraph 4 of this ACKNOWLEDGMENT.

5 7. I understand that any disclosure or use of Confidential Information in any manner
6 contrary to the provisions of the PROTECTIVE ORDER will constitute a breach of the
7 PROTECTIVE ORDER and also of my obligations under this ACKNOWLEDGEMENT, which
8 may subject me to legal action.

9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed this _____ day of _____, 2007.

11 _____
12 DATE: _____

TIME: _____

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